

PIONEER RAILROAD EQUIPMENT CO., LTD
1318 SOUTH JOHANSON ROAD • PEORIA, ILLINOIS 61607 • (309) 697-1400

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19680

0100836027

October 31, 1995

NOV 1 1995 10 22 AM

Interstate Commerce Commission
Recordation Department, Room 2311
12th. & Constitution Ave., N.W.
Washington, D.C. 20423

19682

RECORDED & INDEXED FILED 1423

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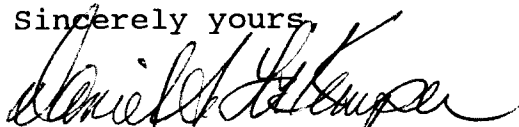
RE: Locomotive Leases NOV 1 1995 10 22 AM

Interstate Commerce Commission

Dear Sir or Madam:

Enclosed are three (3) separate locomotive leases for recordation, along with the checks for the filing fees. Please record, and return the file-stamped originals. If you have any questions, please call me.

Sincerely yours,


Daniel A. LaKemper,
General Counsel.

LICENSING DIVISION

Nov 1 10 23 AM '95

Enclosures.



Interstate Commerce Commission
Washington, D.C. 20423-0001

11/1/95

Office Of The Secretary

Daniel A. LaKemper
General Counsel
Pioneer Railroad Equipment Co., Ltd.
1318 South Johanson Road
Peoria, Illinois 61607

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/1/95 at 10:25AM , and assigned recordation number(s). 19680, 19681 and 19682.

Sincerely yours.

Vernon A. Williams
Secretary

Enclosure(s)

(0100836027)

\$ 63.90 The amount indicated at the left has been received in payment of a fee in connection with document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had opportunity to examine your document.

Signature

LOCOMOTIVE LEASE AGREEMENT

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease") is entered into this 31st day of October, 1994, by and between PIONEER RAILROAD EQUIPMENT CO., LTD., as Lessor, whose address is 1831 N. Santa Fe Ave., Chillicothe, Illinois 61523 (hereinafter "PREL"), and ROCKY MOUNTAIN RAILCAR & RAILROAD, INC., as Lessee, whose address is P.O. Box 218, Hudson, Colorado 80642 (hereinafter "RMRR"); WITNESSETH THAT:

WHEREAS PREL is the owner of a certain locomotive hereinafter described; and

WHEREAS RMRR is desirous of leasing said Locomotive for a terminal switching operation in Hudson, Colorado;

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. LEASE AND LEASED PROPERTY. RMRR hereby leases from PREL, an EMD Type GP-16 locomotive, currently marked "RMRR 1406" (hereinafter the "Locomotive"), together with the parts, accessories, attachments and devices, if any, now or hereafter affixed thereto, under the terms and conditions herein provided.

2. TERM. The term of this Lease shall commence on the date the Locomotive is accepted in interchange by the A&M at Fort Smith, Arkansas, and shall continue for a period of one year from the first of the month following commencement, unless sooner terminated as provided herein.

3. RENTAL.

(A) The rental payable shall be \$1,580 per month, payable in advance on the first of each and every month during the term hereof. In addition, RMRR shall pay \$50. per day for each day between commencement and the first day of the month following commencement, as well as a return deposit of \$2,000., both sums payable at the execution of this Lease. The return deposit will be returned to RMRR, upon return of the Locomotive, in compliance with Section 6.

(B) If any payment of Rental due is more than five (5) calendar days late, there shall be a late fee of \$50.00 due and payable to PREL, for administrative cost of such late payment.

(C) All Rentals shall be paid to PREL at 1831 N. Santa Fe Ave., Chillicothe, Illinois 61523, or at such other address as PREL may from time to time direct in writing.

4. TAXES. RMRR shall be responsible for the payment and filing of all use, excise, ad valorem, personal property, stamp, documentary and similar taxes levied or imposed upon, or relating to this lease of the Locomotive, or the use, registration, rental, maintenance, possession or operation thereof, and shall hold PREL harmless against any liability and expense (including attorney fees and court costs and expenses) on account of RMRR's failure to do the same.

5. OWNERSHIP AND INSPECTION. PREL shall retain all rights and interest in the Locomotive not herein specifically mentioned, including but not limited to:

(A) The Locomotive shall at all times remain the sole and exclusive property of PREL.

(B) Upon reasonable notice to RMRR, PREL or its agents shall have free access to the Locomotive at reasonable times for the purpose of inspections.

(C) No accessions, additions, alterations, improvements to or removals from the Locomotive, of any nature, shall be made without PREL's written consent, but if any additions or improvements are made, they immediately shall become part of the Locomotive and shall become PREL's sole and exclusive property.

(D) RMRR shall keep the Locomotive at all times free and clear of all claims, liens, and encumbrances.

(E) This Lease is intended to be a true lease of the Locomotive, and is not intended and in no way shall be construed to create a sale of the Locomotive or the creation of any equity or ownership interest therein.

6. DELIVERY/RETURN. Delivery of the Locomotive shall be accepted by RMRR at the Fort Smith Railroad ("FSR") yard in Fort Smith, Arkansas. PREL shall cause such Locomotive to be interchanged to the Arkansas & Missouri Railroad ("A&M"), for forwarding to Burlington Northern Railroad ("BN"). PREL shall pay the transportation charges, if any, of FSR, and RMRR shall pay for all transportation charges of A&M and BN from Fort Smith to Hudson, Colorado. Upon the termination of this Lease, whether by expiration or otherwise, RMRR shall return such Locomotive to PREL, in substantially the same order and condition as that received, reasonable wear and tear excepted, by causing the Locomotive to be shipped and interchanged, via BN, to the Mississippi Central Railroad at Holly Springs, Mississippi. RMRR shall pay all costs and expenses for such return and RMRR shall pay or reimburse PREL for any reasonable expenses incurred by PREL in returning the Locomotive to running condition. Prior to shipment, RMRR and PREL shall do a joint inspection in Hudson, Colorado to confirm the condition of the Locomotive.

7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER.

(A) RMRR hereby acknowledges that it has, or will have, the opportunity to inspect the Locomotive prior to accepting delivery of same, and that acceptance of delivery of the Locomotive by RMRR constitutes acknowledgement that they have been received in running condition and repair. PREL shall not be responsible for any repairs or maintenance of the Locomotive during the term of this Lease, except as provided in Section 8.

(B) Delivery to and acceptance of the Locomotive by, and execution of this Lease by RMRR shall constitute acknowledgement that the Locomotive is of the manufacture, design, utility, quality and capacity selected by RMRR; that RMRR is satisfied that the same is suitable for its purpose and that RMRR waives any and all warranties, except those expressly made in Section 8.

8. WARRANTY. PREL DISCLAIMS ALL WARRANTIES, EXPRESSED AND IMPLIED, AND MAKES NO REPRESENTATION, EXPRESSED OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE. THE LOCOMOTIVE WILL BE DELIVERED "AS IS" AND "WITH ALL FAULTS", EXCEPT THAT THE LOCOMOTIVE WILL BE INTERCHANGED TO A&M AT FORT SMITH, ARKANSAS IN INTERCHANGE CONDITION. If A&M rejects the Locomotive for interchange at Fort Smith, PREL shall have the option to correct the defect(s), or to terminate the contract, within a reasonable time. If PREL elects to terminate the contract, it shall have no liability whatsoever to RMRR. If A&M accepts the Locomotive at Fort Smith, such acceptance shall create an irrebuttable presumption that it was delivered in interchange condition. PREL also warrants that it has good and valid title to the Locomotive and will defend such title against any third party. IN NO EVENT SHALL PREL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, PROFITS OR USE. RMRR acknowledges that PREL is not the manufacturer of the Locomotive, or any part thereof, nor is it an agent or dealer for the manufacturer or any supplier of any part thereof, and that the Locomotive was purchased "used" by PREL and can be expected to perform and have all of the maintenance needs of a used Locomotive. Nothing herein shall preclude RMRR from pursuing any claim against any third party for damage to the Locomotive occurring after it is interchanged to A&M.

9. USE/MAINTENANCE. RMRR agrees that:

(A) RMRR shall be responsible for and pay all registrations, certificates, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of Lessor or Lessee.

(B) The Locomotive shall be used and operated only by properly qualified, trained and registered personnel authorized by RMRR, and in no event shall RMRR permit anyone to operate the Locomotive who is not properly licensed under Federal Railroad Administration ("FRA") regulations.

(C) RMRR shall comply with all federal, state, municipal and local laws, ordinances, rules and regulations relating to the lease, possession, use and operation of the Locomotive.

(D) RMRR shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including, without limitation, the seizure or confiscation of the Locomotive) levied upon or arising out of the use, operation, maintenance or insuring of the Locomotive in violation of any law, ordinance, rule or regulation of any governmental authority.

(E) RMRR shall pay all costs, expenses and charges incurred in connection with the maintenance, lease, use possession and operation of the Locomotive.

(F) RMRR shall maintain the Locomotive in running order and in compliance with all manufacturer's specifications and rules and regulations now or hereafter promulgated by the FRA or any other governmental authority having jurisdiction.

(G) RMRR shall keep and maintain any and all books and records and make any filings required by any governmental authority with respect to the possession, lease, use or operation of the Locomotive.

(H) RMRR may affix vinyl lettering to identify the Locomotive, but shall not repaint the Locomotive without the prior written consent of PREL. RMRR shall keep the legends on the Locomotive identifying it as "owned and leased by Pioneer Railroad Equipment Co., Ltd." clean and visible at all times.

(I) RMRR shall use the Locomotive in the service specified in the recital hereinabove, and no other, except with the prior written consent of PREL, which consent shall not be unreasonably withheld, provided such other service is upon the contiguous railroad system of the United States of America or the Dominion of Canada.

10. LIENS, CHARGES. RMRR shall promptly and fully pay for all supplies or materials furnished for, or labor performed upon the Locomotive, at the instance or request or on behalf of RMRR, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be filed or enforced against the Locomotive. RMRR shall indemnify and hold harmless PREL against and from any and all liens, claims, demands, costs and expenses of whatsoever nature (including, without limitation, court costs and attorney fees) in any way connected with or growing out of such work done, labor performed or materials or supplies furnished.

11. INSURANCE.

(A) RMRR shall procure and maintain, at its sole cost and expense, the following kinds of insurance, and provide PREL with a certificate(s) of insurance certifying to the effectiveness of such coverage:

i. General Public Liability insurance providing coverage on the Locomotive in an amount not less than three million dollars (\$2,000,000.00)

combined single limit per occurrence, including, without limitation, protection of the interests of RMRR and PREL, including RMRR's operators, with respect to liability for injuries to or death of third persons and damage to or loss or destruction of property of third persons resulting from the possession, maintenance, use or operation of the Locomotive.

ii. Collision and comprehensive physical damage insurance on the Locomotive for the term of this Lease, in an amount not less than the replacement value of the Locomotive, and covering all risks, including, but not limited to, natural and man-made disasters, flooding, freezing, thawing, storms, vehicular accidents, derailments, collision with other locomotives or railroad rolling stock or equipment, vandalism, and theft.

iii. Federal Employers' Liability Act ("FELA") liability insurance, covering all employees involved in railroad operations on or near the Locomotive, in an amount not less than two million dollars (\$2,000,000.00) combined single limit per occurrence.

(B) RMRR shall promptly pay when due all premiums for such insurance, and shall keep such insurance in force for the life of this Lease. Such insurance policy(ies) shall contain an endorsement naming Pioneer Railroad Equipment Co., Ltd. as an additional insured with respect to all liabilities arising out of RMRR's obligations hereunder, severability of interests, and shall provide that coverage shall not be cancelled or changed during the term of this Lease without giving at least thirty (30) days prior written notice to PREL at the address for insurance correspondence specified hereinbelow.

(C) All insurance required herein shall be written by an insurance company or companies satisfactory to PREL and authorized to transact business in all of the states in which the Locomotive is to be operated;

(D) All insurance required herein shall provide by endorsement a waiver of subrogation rights by the insurance company and RMRR hereby waives its right to subrogation, as respects the above insurance policy(ies), against PREL for payments made to or on behalf of employees or agents of RMRR, and for loss of its owned or leased property or property under its care, custody or control. The insurance provided for herein shall be primary with respect to any insurance carried by PREL.

(E) RMRR WARRANTS that this Lease has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure the insurance coverage and endorsements as required herein.

(F) If RMRR shall fail to obtain or maintain the insurance coverage required in this Lease, or shall fail to furnish PREL with certificates therefor, PREL, at its option, may obtain such insurance on behalf of Lessee and at Lessee's expense.

(G) All insurance correspondence shall be directed to: Office of the General Counsel, Pioneer Railroad Equipment Co., Ltd., 1831 N. Santa Fe Ave., Chillicothe, Illinois 61523, or such other address as PREL may provide in writing to RMRR.

12. INDEMNIFICATION.

(A) Notwithstanding the insurance provisions included hereinabove, and irrespective of any responsibility for negligence, RMRR does hereby agree to defend, indemnify, protect and hold harmless PREL, its officers, directors, employees, agents, attorneys, insurers, parents, subsidiaries, affiliated companies, successors and assigns, from and against any and all losses, liabilities, damages, claims, actions, causes of action, penalties, fines,

judgements, costs and expenses (collectively "Claim") resulting from, arising out of, or in any way connected with the use, possession, condition, operation, or maintenance of the Locomotive, if the act or omission giving rise to the Claim occurs during the term of this Lease, or any renewal thereof. This Section is intended to cover, but not be limited to, FELA claims, derailments, crossing or other vehicular accidents, FRA and other health and safety actions, and any claim brought by any state, federal, or local governmental agency or instrumentality under any environmental protection statute, rule, regulation, ordinance, order or other mandate (including the Comprehensive Environmental Response Compensation and Liability Act). This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this Lease.

(B) RMRR assumes and agrees to indemnify, protect and hold harmless PREL, its successors and assigns, from and against any and all loss, cost and/or expenses arising out of or resulting from any loss, damage, theft or destruction of the Locomotive or any part thereof.

13. ASSIGNMENT OF LEASE. PREL shall have the unconditional right to assign this Lease, in whole or in part. RMRR shall have no right to assign or sub-lease this Lease or the Locomotive, or any interest therein.

14. DEFAULT. RMRR shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):

(A) Default in the payment when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by RMRR to PREL.

(B) Default in the timely performance of any other liability, obligation, covenant or agreement of RMRR hereunder.

(C) The filing of any insolvency, bankruptcy or similar proceeding by or against RMRR under the provisions of the United States Bankruptcy Code or any insolvency law or other statute or any law providing for the modification or adjustment of the rights of creditors, including any assignment by RMRR for the benefit of creditors.

(D) The dissolution or liquidation of RMRR.

15. REMEDIES UPON DEFAULT.

(A) Upon the occurrence of any Event of Default, and after first giving notice to RMRR as provided in Section 18, giving RMRR thirty (30) days to correct said deficiency or default, if RMRR still has not remedied the Event of Default, PREL, in its sole discretion, may take one or more of the following actions with respect to the Locomotive:

i. Declare all unpaid amounts of rental to be immediately due and payable.

ii. Terminate the Lease of the Locomotive by written notice.

iii. Require that RMRR shall, at RMRR's expense, promptly make available to PREL at RMRR's expense, the Locomotive at a place designated by PREL which is reasonably convenient to both parties.

iv. To take immediate possession of the Locomotive wherever located, and secure it, in such manner as PREL, in its sole discretion deems necessary for its safe-keeping and protection, and RMRR hereby waives and disclaims any rights at law or in equity to notice of such repossession.

v. Sell or lease the Locomotive, at a public or private sale or proceeding, at such time or times and upon such terms as PREL may determine, free and clear of any rights of RMRR and, if notice thereof is required by applicable law, any notice in writing of any such sale or lease by PREL to RMRR not less than five (5) days prior to the date thereof shall constitute reasonable notice to RMRR.

vi. Proceed by appropriate action either at law and/or in equity to enforce performance by RMRR of the applicable covenants of this Lease and/or to recover damages for the breach thereof and/or to rescind the Lease hereunder of the Locomotive.

vii. Exercise any and all other rights and remedies available to PREL under any applicable law. In addition, RMRR shall be charged with and shall pay to PREL all reasonable costs and expenses (including, without limitation, court costs and attorney fees) of PREL incurred as a result of each Event of Default by RMRR.

(B) None of the rights and remedies under or referred to in this Section 15 are intended to be exclusive, but each such right or remedy shall be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to PREL at law or in equity. Any repossession or subsequent sale or lease by PREL of any Locomotive shall not bar an action against RMRR for a deficiency.

(C) Without limitation of any rights of PREL otherwise existing or otherwise available to PREL, it is expressly covenanted and agreed by the parties hereto that in the event of any assignment by operation of law of this Lease or of any bankruptcy or similar action as described in Section 14(C), PREL may at its option, immediately terminate this Lease, and take such other action as may be necessary or desirable to protect its interest in the Locomotive, without the Notice and opportunity to correct, provided for in subsection 15(A) above.

16. RECORDATION OF PREL'S INTEREST. RMRR agrees to execute all documents requested by PREL to show PREL's interest in the Locomotives. RMRR further authorizes PREL to execute and file financial statements or other documents evidencing PREL's interest in the Locomotive without RMRR's signature.

17. RENEWAL. This Lease shall automatically terminate at the conclusion of the term provided in Section 2, and RMRR shall return the Locomotive to PREL, at its cost and expense, as provided in Section 6, unless the parties shall agree in writing to extend the term.

18. NOTICE. Any Notice required or permitted to be given hereunder shall be by certified mail, postage fully prepaid, and return receipt requested, and shall be addressed to the respective parties at their addresses recited in the preamble hereinabove, or at such other address as the parties may from time to time give notice of. Such Notice shall be effective when received, refused, or returned by the postal service as undeliverable.

19. CHOICE OF LAW; CHOICE OF FORUM. This Lease shall be governed, construed and enforced in accordance with the laws of the State of Illinois, without regard for the principles of conflict of laws. Litigation arising out of or connected with this Lease may be instituted and maintained in the courts of the State of Illinois only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in those courts, and consent to service of process issued by such courts.

20. SEVERABILITY. If any clause or provision of this Lease is finally determined to be invalid, illegal or unenforceable by a Court of competent jurisdiction,

then that clause or provision only shall be held inoperative, as though not herein contained, and the remainder of this Lease shall remain operative and in full force and effect.

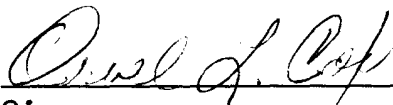
21. WAIVER OF BREACH. The waiver by PREL of the breach of any condition, covenant or agreement herein contained to be kept, observed or performed by the Lessee shall in no way impair the right of PREL to avail itself of any subsequent breach thereof, whether of the same or similar nature, or not. No failure or delay on the part of PREL in exercising any right, power or remedy hereunder shall preclude any subsequent or further exercise thereof.

22. CONSTRUCTION. This Lease constitutes the entire agreement between the parties and supersedes any and all prior agreements, oral or written. No waiver, modification, or amendment of this Lease shall be of any force or effect unless made in writing, signed by the parties, and specifying with particularity the nature and extent of such waiver, modification or amendment. Section headings used in this Lease are inserted for convenience of reference only and shall not be deemed to be a part of this Lease for any purpose. Unless otherwise expressly provided or unless the context otherwise requires, words importing the singular number shall mean and include the plural and vice versa.

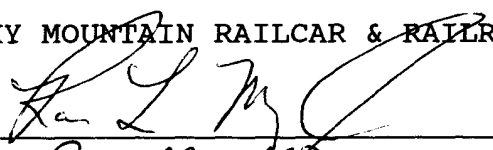
23. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 13, above, this Lease shall be binding upon and inure to the benefit of the parties and their respective officers, directors, employees, agents, insurers, attorneys, successors and assigns.

Dated this 31st day of October, 1994.

PIONEER RAILROAD EQUIPMENT CO., LTD.

By: 
Name:
Its:

ROCKY MOUNTAIN RAILCAR & RAILROAD, INC.

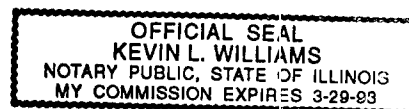
By: 
Name: Ron Mayhew
Its: Pres.

STATE OF ILLINOIS)
) SS
COUNTY OF PEORIA)

The undersigned authority, a Notary Public in and for said County and State, hereby certifies that Orvel Cox, of Pioneer Railroad Equipment Co., Ltd., signed the foregoing instrument and, being known to me, acknowledged before me this day that, being informed of the contents of said instrument, he signed as the Vice President of said corporation, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 7th day of ~~October~~ ^{November}, 1994.

Kevin L. Williams
Notary Public



STATE OF COLORADO)
) SS
COUNTY OF Weld)

The undersigned authority, a Notary Public in and for said County and State, hereby certifies that Ron L. Maynard, of Rocky Mountain Railcar & Railroad, Inc., signed the foregoing instrument and, being known to me, acknowledged before me this day that, being informed of the contents of said instrument, he signed as the President of said corporation, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 31st day of October, 1994.

Susan M. Knauer
Notary Public

My Commission Expires: 6-7-96